

**BOARD OF EQUALIZATION****BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: AUGUST 14, 2007, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title: Review, discussion and proposed regulations regarding the classification and tax rates of flavored malt beverages****Issue/Topic:**

Should the Board of Equalization authorize publication of a regulation to tax flavored malt beverages as distilled spirits?

Committee Discussion:

Interested parties addressed the Committee in support of either Alternative 1 or Alternative 2 and explained why they believe the regulations should be authorized. Interested parties in opposition addressed the Committee in support of Alternative 3.

Staff and interested parties addressed questions raised by Committee members, and discussed staffing, resource requirements, and other implementation concerns needed to implement the regulations. Board Member Leonard suggested the Committee consider pursuing changes to the Alcoholic Beverage Tax Law via the legislative process in addition to the regulatory action taken in today's meeting.

Committee Action/Recommendation/Direction:**Action 1 – Approval and Authorization to Publish Proposed Regulatory Amendments**

Upon motion by Ms. Chu, seconded by Ms. Mandel, the Committee approved Alternative 1.

The vote was as follows:

MEMBER	Yee	Leonard	Steel	Chu	Mandel
VOTE	Yes	No	No	Yes	Yes

Committee Action/Recommendation/Direction:Action 1 – Adopt Alternative 1

The Committee recommended that the Board authorize publication of the proposed new regulations 2558. *Distilled Spirits*; 2559. *Presumption – Distilled Spirits*; 2559.1. *Rebuttable Presumption – Distilled Spirits*; 2559.3. *Internet List*; 2559.5. *Correct Classification*; adopted in the above action. The operative date is July 1, 2008. A copy of the proposed regulations is attached.

Approved: **/s/ Betty T. Yee**
Honorable Betty T. Yee, Committee Chair
/s/ Ramon J. Hirsig
Ramon J. Hirsig, Executive Director

BOARD APPROVED

at the **August 14, 2007** Board Meeting

/s/ Gary Evans
Gary Evans, Acting Chief
Board Proceedings Division

Regulation 2558. DISTILLED SPIRITS.

Effective July 1, 2008, any alcoholic beverage, except wine as defined by Business and Professions Code section 23007, which contains 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products, is a distilled spirit.

Authority: Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

Regulation 2559. PRESUMPTION - DISTILLED SPIRITS.

Effective July 1, 2008, unless the contrary is established, any alcoholic beverage, except wine as defined by Business and Professions Code section 23007, is presumed to contain 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of agricultural products.

Authority: Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

Regulation 2559.1. REBUTTABLE PRESUMPTION - DISTILLED SPIRITS.

The presumption in Regulation 2559 may be rebutted by the manufacturer of the alcoholic beverage filing a report, under penalty of perjury, with the Board stating that the alcoholic beverage contains less than 0.5 percent alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of agricultural products and specifying the sources of the alcohol content of the alcoholic beverage, including the alcohol by volume derived from flavors or other ingredients containing alcohol obtained by distillation. Additionally, the Board may require a copy of the manufacturer's "Statement of Process" or "Formula" filed with the Alcohol and Tobacco Tax Trade Bureau, its predecessor agency or successor agency.

Authority: Section 32451, Revenue and Taxation Code.

Reference: Sections 32002, 32452, 32453 Revenue and Taxation Code; Sections 23004, 23005, 23007, Business and Professions Code.

The proposed language contained in this document may not be adopted. The language adopted may differ from this text.

Regulation 2559.3. INTERNET LIST.

Not later than July 1, 2008, and updated on a quarterly basis thereafter, the Board shall develop, publish and maintain on its Internet site a listing of all alcoholic beverages that have been found, in the Board's discretion, to have successfully rebutted the presumption set forth in Regulation 2559.

Authority: Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

Regulation 2559.5. CORRECT CLASSIFICATION.

A taxpayer will be deemed to have correctly classified an alcoholic beverage for purposes of tax reporting if at the time taxes were incurred, the alcoholic beverage was included on the Board's list pursuant to Regulation 2559.3.

Authority: Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

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